

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FLORENCE R. PARKER,

Plaintiff,

v.

PENNSTAR BANK, *et al.*,

Defendants.

No. 3:09-cv-00490

(Judge Caputo)

(Magistrate Judge Smyser)

MEMORANDUM ORDER

Presently before the Court are the Report and Recommendation (“R&R”) of U.S. Magistrate Judge Smyser (Doc. 73), and Plaintiff Florence Parker’s Objections to the R&R (Doc. 74). The R&R recommends that Parker’s Motion for Default Judgment (Doc. 57) be denied.

Default is a sanction of last resort that is disfavored in the Third Circuit. *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984); *Emcasco Ins. Co. v. Sambrick*, 834 F.2d 71, 75 (3d Cir. 1987); see also *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984) (“we have repeatedly stated our preference that cases be disposed of on the merits whenever practicable”). Plaintiff objects to the R&R arguing that default judgment should be awarded for her due to the Defendants’ untimely filing of an Answer and their failure to request that their answer be regarded as timely filed.

Default judgment is inappropriate here for two reasons. First, the Clerk of Court has never entered a Default against the Defendants, a necessary pre-requisite before considering a motion for default judgment. See FED. R. CIV. PRO. 55(a). Second, and most importantly, while the Defendants filed an Answer out of time in this case, an Answer has

been filed. There is no reason why this case cannot be evaluated on the merits. I agree with the recommendation of Magistrate Judge Smyser than an analysis on the merits of this case is more appropriate for both parties than an entry of default judgment.

NOW this 12th day of January, 2010, upon review of Magistrate Judge Smyser's Report and Recommendation (Doc. 73), **IT IS HEREBY ORDERED** that:

- (1) The Report and Recommendation (Doc. 73) is **ADOPTED**, and Plaintiff Florence Parker's objections are overruled.
- (2) Plaintiff Florence Parker's Motion for Default Judgment (Doc. 57) is **DENIED**.
- (3) Defendants Answer (Doc. 55) is deemed timely filed.
- (4) The case is **RECOMMITTED** to Magistrate Judge Smyser for further proceedings.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge